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Arizona Corporation Commission

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JUN 20 2008

AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
LITTLE PARK WATER COMPANY INC. FOR
AN EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER SERVICE IN YAVAPAI
COUNTY, ARIZONA

) DOCKET NO. W-02192A-07-0326

)
)
) **MOTION IN THE**
) **ALTERNATIVE FOR A**
) **CLARIFICATION,**
) **PROCEDURAL ORDER, OR**
) **CONDITIONAL CERTIFICATE**

Little Park Water Company, Inc. ("Little Park" or the "Company"), by and through undersigned counsel, hereby files its Request In the Alternative for a Clarification, Procedural Order, or Conditional Certificate of Convenience and Necessity regarding certain provisions of Decision No. 70208 dated March 20, 2008, and in support of said Motion states as follows:

1. Decision No. 70208, dated March 20, 2008, (the "Decision") requires, among other things, four compliance items as follows:

- a. By May 1, 2008, file either; (i) an application for approval of WIFA funding for the Arsenic Treatment Plants (the "ATP's"), or (ii) a document evidencing an equity infusion for that purpose; and.
- b. By June 1, 2009, file an Arizona Department of Environmental Quality's ("ADEQ's") Approval to Construction ("ATC") for the ATP's; and
- c. By June 30, 2009, file; (i) Approvals of Construction ("AOC's") for the ATP's at the two existing wells, and (ii) an AOC for the on-site facilities to serve the expansion area; and

1 d. By May 1, 2010, file a letter showing the water sales within the expansion area
2 are being reported to the Arizona Department of Water Resources ("ADWR"),
3 and (ii) a letter from ADWR confirming that the Company's Designation of
4 Assured Water Supply was still in effect.

5 2. The Company complied with Compliance Item 1(a)(ii) by filing that document on
6 May 1, 2008.

7 3. Staff advised the Company that a simple Procedural Order could not amend an
8 Order Preliminary, so the Company filed a Request for Extension of Time to Comply on May 14,
9 2008, and a related Letter to Executive Director Brian McNeill on May 29, 2008 requesting an
10 extension of time to file the June 1 ATC required by Compliance Item 1(b), or reconsideration
11 under ARS §40-252 of the Item 1(b) due date, (collectively the "Request"). We are advised that
12 the Commission responded to that Request by authorizing the Hearing Division to issue a
13 Procedural Order granting an extension of that June 1, 2008 filing date to August 1, 2008, and
14 that the Procedural Order will be formally issued soon. The Company is very appreciative of
15 receiving that extension, and in fact, docketed two ATC's for the ATP's at the two respective
16 wells on June 20, 2008.

17 4. At the time of filing the Request, neither the Company, nor counsel to the
18 Company, were aware of the Staff and Commission position that a company could not
19 commence construction within an expansion area under an Order Preliminary. We were aware
20 what A.R.S. § 40-281 says specifically in that regard, but understood that historically the
21 Commission had allowed such pre CC&N construction. (See also Paragraph 7 below)

22 5. On May 7, 2008 the Company submitted to Staff a Line Extension Agreement
23 with Camp Soaring Eagle, one of the property owners in the expansion area, for Staff's approval

1 in accordance with AAC R14-2-406, which approval the Staff granted on June 2, 2008. That
2 Agreement contemplated the construction of certain water deliver facilities, as well as the
3 payment of Arsenic Impact Fees ("AIF's") in the amount of \$234,300. Those AIF funds, along
4 with previously collected AIF's will be used to fund the ATP's construction. The Developer was
5 anxiously awaiting receipt of the approved LXA to commence immediate construction of the on-
6 site water main for fire protection purposes as mandated by the Sedona Fire District, before
7 construction of the buildings. It is also urgent that the Company be able to serve potable water to
8 the children at the Camp as soon as possible.

9 6. The Company now faces this dilemma; on one hand, obtaining Compliance Item 1
10 ('c) above, and on the other hand, being prohibited from contractually collecting the AIF's for the
11 ATP construction and, more importantly, being prohibited from constructing those facilities
12 under the Order Preliminary.

13 7. The Company believes the Decision can be interpreted in a reasonable manner to
14 suggest that construction under the Order Preliminary is permissible given the language in the
15 first ordering paragraph, to wit: "IT IS THEREFORE ORDERED that, pursuant to A.R.S. § 40-
16 282, Little Park Water Co. Inc. is granted an Order Preliminary allowing it to provide water
17 utility service in the area described in Exhibit A, conditioned upon compliance with the
18 requirements in Finding of Fact No. 57." (Emphasis added) The Company is of the opinion that
19 the emphasized language can be read to authorize provision of service, not merely pre-CC&N
20 approval. When combined with the four compliance items above, particularly Item 1(d), which
21 requires reporting water sales as a condition of the full CC&N, it appears logical that service, and
22 therefore construction, must occur prior to compliance and the CC&N issuance.

1 8. Because the Company does not wish to misinterpret the Decision and risk violating its
2 requirements, it believes an opinion by the Commission Staff confirming the above interpretation
3 would permit the logical sequence of collecting the AIF, the construction of the on-site facilities,
4 constructing the ATP, filing the AOC's for the on-site facilities and the ATP, and thereafter
5 reporting subject water sales to ADWR. This would permit filing all compliance items and filing
6 the motion for the issuance of a Final Order as contemplated in the second ordering paragraph of
7 the Decision.

8 9. In the event the Staff or the Commission believe a Staff opinion letter is
9 insufficient to permit the immediate construction and AIF collection, the Company would request
10 that a Procedural Order be issued authorizing the required construction and commencement of
11 service under the terms of the Order Preliminary.

12 10. If the Procedural Order were deemed insufficient authority for the construction,
13 the Company would request that a Commissioner move that the Decision be reopened for
14 reconsideration pursuant to A.R.S. § 40-252 to either; (1) authorize the construction and
15 commencement of service under the Order Preliminary or, (2) grant a conditional Certificate of
16 Convenience and Necessity which would permit the Company to provide the service and comply
17 with all other compliance item set forth in Paragraph 57 of the Decision.

18 WHEREFORE, Little Park respectfully requests that the Commission, in the alternative,
19 (1) confirm the interpretation of the Decision as proposed above, (2) issue a Procedural Order
20 permitting construction and commencement of service under the Order Preliminary, or (3) issue a
21 conditional Certificate of Convenience and Necessity as requested.

1 Respectfully submitted this 20th day of June, 2008.

2 SALLQUIST, DRUMMOND & O'CONNOR, P.C.

3 By: 

4 Richard L. Sallquist

5 SALLQUIST, DRUMMOND & O'CONNOR, P.C.

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7 Tempe, AZ 85282

8 Attorneys for Little Park Water Company, Inc.

9 The original and fifteen copies of the foregoing
10 were filed this 20th day of June, 2008:

11 Docket Control
12 Arizona Corporation Commission
13 1200 W. Washington St.
14 Phoenix, AZ 85007

15 Copies of the foregoing were hand delivered
16 this 20th day of June 2008 to:

17 Mike Gleason, Chairman
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 Jeff Hatch-Miller, Commissioner
22 Arizona Corporation Commission
23 1200 West Washington Street
Phoenix, Arizona 85007

William A. Mundell, Commissioner
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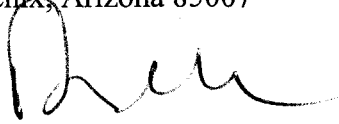
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19 Legal Division
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1 Utilities Division
2 Arizona Corporation Commission
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A handwritten signature in dark ink, appearing to be 'D. H. ...', is written over a horizontal line that spans the width of the signature.